

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ZYEAIR SMITH,	)	Case No. _____
	)	
Plaintiff,	)	
	)	COMPLAINT
vs.	)	and
	)	DEMAND FOR JURY TRIAL
HILAND ROBERTS DAIRY CO.,	)	
	)	
Defendant.	)	

**Jurisdiction**

1. That plaintiff is a citizen of the state of Nebraska who was employed with the defendant from December 2012 until he was terminated by the defendant on July 30, 2013.
2. That defendant is a Nebraska corporation with its main operations as well as its administrative and executive functions in Omaha, Douglas County, Nebraska.
3. That defendant employs no fewer than 200 employees.
4. That plaintiff was employed by defendant at its facility at 2908 Cuming Street in Omaha, Douglas County, Nebraska at all times relevant to this complaint.
5. That plaintiff is an African-American male.
6. That plaintiff filed a timely charge of discrimination against the defendant based on his status as an African-American with the United States Equal Opportunity Commission (EEOC) and with the Omaha Human Rights and Relations Department. (OHHR)
7. That plaintiff's charge was investigated by the Omaha Human Rights and Relations Department.
8. That the Omaha Human Rights and Relations Commission determined on or about March 11, 2014 that there was reasonable cause to believe that plaintiff's race was a motivating factor in his termination by the defendant.

9. The OHHR set a conciliation meeting on April 2, 2014.

10. Plaintiff and his attorney attended the conciliation meeting but the defendant failed to appear that day.

11. Later defendant informed the OHHR that they disagreed with the findings and refused to conciliate.

12. The OHHR determined that conciliation failed and forwarded the charge to the EEOC.

13. The EEOC issued a right to sue letter on June 4, 2014.

### **Facts**

14. At all times during plaintiff's employment that he was a satisfactory employee.

15. Sam Edwards (Edwards) told plaintiff on the end of the shift on July 25, 2013 that he realized that he forgot to clock out and he asked his co-worker, plaintiff, to clock out for him.

16. Edwards had plaintiff clock out for him because company policy prohibited him from clocking in or out in non-work clothes.

17. Edwards is also an African-American male who was also terminated by the defendant.

18. Plaintiff was suspended on July 29, 2013 and then fired on July 30, 2013.

19. Defendant's stated reason for terminating plaintiff was a time card violation.

20. Defendant had a progressive discipline policy that stated most problems could be addressed through counseling and that only serious offenses would be dealt with through termination.

21. While plaintiff did violate the clock-out policy, other similarly situated white employees were disciplined less harshly than the plaintiff.

22. Examples of such similarly situated white employees who were treated differently include:

A. On May 6, 2013, a white employee identified by the OHHR as “BT” received a warning for being off the premises for an hour without clocking out yet only received a warning.

B. On October 15, 2013 a white employee identified by the OHHR as “SR” was given a write up for sleeping on the job.

26. That the conduct described in Paragraphs 25(A) and 25(B) were listed as terminable offenses in the employee handbook.

27. No other employees of the defendant other than plaintiff and Edwards have been terminated solely for time clock violations.

### **Count 1**

28. Plaintiff incorporates Paragraphs 1-27 into this count.

29. That defendant unlawfully discriminated against plaintiff based on his status as African-American in violation of federal law, state law and Omaha municipal law.

30. That defendant willfully and recklessly violated plaintiff’s constitutional rights to equal protection under the law for the reasons stated above.

31. That plaintiff has suffered lost wages and benefits as a result of defendant’s intentional discrimination.

32. That plaintiff has suffered humiliation and other emotional distress as a result of his termination

**Prayer For Relief and Jury Demand**

Plaintiff asks that that this court order all appropriate relief available under Title VII of the Civil Rights Act of 1964 and the Nebraska Fair Employment Practices Act. Plaintiff also asks for a trial by jury.

ZYEAIR SMITH, Plaintiff

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